IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. NO. 315/2007

Judgment reserved on: November 15, 2007

Judgment delivered on: 20.12.2007

Oriental Insurance Company Ltd. ..... Appellant
Through: Ms. Neerja Sachdeva, Adv.

versus

Shobha Balram & Ors. ..... Respondents
Through: Mr. H.S. Arora, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

By way of this present appeal the appellant insurance company seeks to challenge the impugned Award dated 5.3.2007 mainly on the grounds that there was no rash and negligent driving on the part of

the driver of the offending vehicle as the deceased, who was driving Maruti car had hit the bus from behind, which resulted in causing fatal injuries to the deceased. Before examining the rival contentions of the parties it would be appropriate to give a brief summary of the facts:-

On 5.7.1997, deceased Shri K. Balaraman met with an accident at around 5.30 p.m. while he was driving his Maruti car bearing registration No. DL 2 CG 7982 from his office to his residence. The accident was caused by driver, Radhey Shyam, while driving the bus bearing registration No. DL 1P 3462 in a most rash and negligent manner and due to sudden stoppage of the bus without any indication, therefore, the deceased smashed into the bus. A claim petition was filed on 9.12.1997 before the Motor Accident Claims Tribunal and award was made on 5.3.2007. Aggrieved with the said award, the appellant insurance company has preferred the present appeal.

I have heard learned counsel for the parties and have perused the records. The contention of the counsel for the appellant Ms.Neerja Sachdeva is that the learned Tribunal has not properly

appreciated and considered the circumstances under which the accident in question had taken place. Counsel for the appellant also contended that the Tribunal has completely ignored the FIR and the other accompanied documents including the site plan, which clearly shows that the alleged offending vehicle was standing right in front of the bus stop just adjacent to the Krishi Bhawan Building and the deceased took a right turn from Raisina Road at a very high speed and in a most rash and negligent manner and while turning on his right smashed into the rare portion of the bus. The counsel for the appellant also contended that the authenticity of the said site plan filed in the criminal proceedings cannot be doubted and even the FIR in the said case was closed due to the said fact of the involvement of the deceased himself in driving his Maruti car most recklessly resulting into the said accident. Counsel for the appellant further contended that the Tribunal has unnecessarily given credence to the deposition of one eye witness, who never came forward to give any statement to the police and was in fact a planted witness by the respondents. Counsel further submitted that the respondents are not entitled to any amount of compensation due to no fault liability of the

appellant. To substantiate her arguments counsel for the appellant invited my attention to the copy of the site plan placed on the Trial Court records. Counsel for the appellant also invited my attention to the deposition of Constable, Sh. Joginder Singh, who in his cross-examination clearly stated that the deceased victim had hit the bus from behind as a result of which he had died in the hospital. In support of her arguments counsel for the appellant has placed reliance on the judgment of the Apex Court in **Mohd. Hanif and Anr. vs H.P. Road Transport Corpn. and Ors. (2206) 2 SCC (Cri) 293**.

Per contra Mr.H.S. Arora, counsel for the respondent seriously refuted the contentions of the counsel for the appellant. Counsel for the respondent contended that the offending bus had given a sudden abrupt halt without giving any signal and indication and were trying to accommodate some passenger to board the bus due to which the Maruti car coming from behind rammed into the bus. The counsel contended that the bus driver was most rash and negligent in driving the offending vehicle and sudden stoppage of the vehicle only led to causing the said accident. Counsel for the respondent further

contended that rash and negligent driving on the part of the driver of the offending vehicle was duly proved by the respondents. In as much as the testimony of the eye witness PW4 remained unrebutted, who in his deposition clearly gave the first hand account of the said accident and held the driver of the bus responsible for causing the said accident. The said witness also stated that his name was noted down by the police on the spot of accident itself, but his statement was not recorded by the police. Counsel further contended that the appellant failed to examine driver of the offending vehicle and, therefore, adverse inference against the appellant has rightly been drawn by the Tribunal. In support of his arguments counsel for the respondent has placed reliance on the following judgments.

1. **Laxmi Gontiya and Anr. vs Nandlal Tahalramani & Ors. 1999 ACJ 241**;
2. **Mahadeb Roy vs Sikha Das & Ors. 1999 ACJ 1042;**
3. **Santosh Kumari vs Ram Sarup etc. 2001 RLR 241**

It is a settled legal position that burden of proving the issue is on the party who after proving the same can be placed at advantageous position and on not proving the same, it would be put

to a disadvantages position. In this regard, the Hon'ble Apex Court has given following observations in **Narcinva V. Kamat v. Alfredo Antonio Doe Martins, (1985) 2 SCC 574**

> "The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of a term of contract permits a party to the contract to not to perform the contract, the burden is squarely on that party which complains of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led."

The defence of imputing negligence on the part of the victim, who was driving the Maruti vehicle has not been proved by the appellant. Mere reliance on the copy of the site plan or contents of the FIR would not lead to create any strong presumption in favour of the appellant unless the same was further substantiated with the help of some other supporting material and cogent evidence. The best evidence in the present case was the testimony of the driver of the offending vehicle, who for the reasons best known to the appellant was not examined and, therefore, the best evidence was withheld by the appellant itself. The Tribunal has referred to certain judgments in support of the proposition that the evidence recorded in criminal case

and findings arrived there on should not be used in claim cases and there cannot be any dispute on this proposition of law. The respondents/claimants had produced an eye witness Mr. Darshan Singh and the testimony of the said witness remained almost unrebutted as in his cross-examination the appellant failed to shatter his testimony. In the absence of any evidence to the contrary the Tribunal has rightly placed reliance upon the testimony of an eye witness and the statements of other witnesses and has also rightly ignored the criminal records.

I do not find any merit in the present appeal and the same is hereby dismissed.

December 20, 2007 **KAILASH GAMBHIR**
rkr **JUDGE**